

**APPEAL PROCESS
DIRECTIVE 34.0**

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DIRECTIVE #34.0: APPEAL PROCESS

Purpose of Directive

This directive outlines the appeals process and the delivery agent's responsibilities in accordance with the legislation, regulations and policy.

Legislative Authority

Section 2, Part II, Sections 24 to 36 and Part IV, Sections 60 to 67 of the Act state:

DEFINITIONS

2. In this Act, ...

"Tribunal" means the Social Benefits Tribunal established under section 60. ("Tribunal") 1997, c. 25, Sched. A, s. 2.

NOTICE OF DECISION

24. An administrator shall give notice to the applicant or recipient of a decision that may be appealed and the notice shall advise the applicant or recipient that he or she may request an internal review of the decision. 1997, c. 25, Sched. A, s. 24.

WHEN DECISION TAKES EFFECT

25. (1) A decision of the administrator shall be effective from the date fixed by the administrator, whether it is before, on or after the date of the decision.

WHEN DECISION IS FINAL

(2) An administrator's decision that may not be appealed is final when it is made.

SAME

(3) An administrator's decision that may be appealed is final,

- (a) when the prescribed time for requesting an internal review expires, if no internal review is requested within that time; or
- (b) on the earlier of the day the prescribed time for completing the internal review expires and the day the internal review is completed, if an internal review has been requested. 1997, c. 25, Sched. A, s. 25.

DECISIONS WHICH MAY BE APPEALED

26. (1) Any decision of an administrator affecting eligibility for or the amount of basic financial assistance, other than a decision referred to in subsection (2), may be appealed to the Tribunal.

EXCEPTIONS

(2) No appeal lies to the Tribunal with respect to the following matters:

1. A decision with respect to employment assistance that does not affect eligibility for or the amount of income assistance or a mandatory benefit.
2. A decision respecting discretionary benefits.
3. A decision of the Lieutenant Governor in Council respecting assistance in exceptional circumstances.
4. A decision to provide a portion of basic financial assistance directly to a third party.
5. A decision made under subsection 17 (2) to appoint a person to act on behalf of a recipient.
6. A variation, refusal or cancellation of assistance caused by an amendment to this Act or the regulations.
7. A decision respecting emergency assistance.
8. A prescribed decision. 1997, c. 25, Sched. A, s. 26.

INTERNAL REVIEW BEFORE APPEAL

27. (1) No appeal may be commenced unless an internal review has been requested.

SAME

(2) The request for internal review must be made within the prescribed time.

IF REVIEW REQUESTED

(3) If the applicant or recipient requests an internal review, the review shall be completed in the prescribed manner and within the prescribed period.

SPPA DOES NOT APPLY

(4) The *Statutory Powers Procedure Act* does not apply to an internal review. 1997, c. 25, Sched. A, s. 27.

APPEAL TO TRIBUNAL

28. (1) An applicant or recipient may appeal a decision of an administrator within the prescribed period after an internal review by filing a notice of appeal that shall include reasons for requesting the appeal.

SAME

(2) The Tribunal may extend the time for appealing a decision if it is satisfied that there are apparent grounds for an appeal and that there are reasonable grounds for applying for the extension.

SAME

(3) An appeal to the Tribunal shall be commenced and conducted in accordance with the regulations.

PARTIES

(4) The administrator, the applicant or recipient who requested the hearing and any other persons specified by the Tribunal are parties to the proceedings before the Tribunal.

ADD PARTY

(5) At any stage of an appeal, the Tribunal shall add the Director as a party, on his or her request. 1997, c. 25, Sched. A, s. 28 (1-5).

NOTICE TO SPOUSE OR SAME-SEX PARTNER

(6) If an appeal relates to a determination of an overpayment of which the administrator has given notice to a spouse or same-sex partner under subsection 21 (4), the spouse or same-sex partner shall be added as a party. 1997, c. 25, Sched. A, s. 28 (6); 1999, c. 6, s. 50 (5).

SAME

(7) A spouse or same-sex partner who has been added as a party to the appeal of a determination may not commence an appeal in relation to that determination. 1997, c. 25: Sched. A, s. 28 (7); 1999, c. 6, s. 50 (6).

SUBMISSION

(8) The administrator and the Director may make written submissions in place of or in addition to appearing at a hearing.

SAME

(9) If written submissions are to be made, the parties to the hearing shall be given an opportunity before the hearing to examine the submissions, as prescribed.

WRITTEN OR DOCUMENTARY EVIDENCE

(10) The parties to a hearing shall be given an opportunity before the hearing to examine any written or documentary evidence that a party proposes to introduce at the hearing, as prescribed.

ONUS

(11) The onus lies on the appellant to satisfy the Tribunal that the decision of the administrator is wrong. 1997, c. 25, Sched. A, s. 28 (8-11).

NOTICE TO DIRECTOR

29. The administrator shall notify the Director of the prescribed appeals to the Tribunal. 1997, c. 25, Sched. A, s. 29.

INTERIM ASSISTANCE

30. (1) The Tribunal may direct the administrator to provide the prescribed interim assistance to an applicant or recipient if the Tribunal is satisfied that the person will suffer financial hardship during the period needed for the Tribunal to complete its review and give notice of its decision.

SAME

(2) An applicant or recipient may receive interim assistance directed under subsection (1) only so long as he or she meets all conditions of eligibility for assistance other than a condition relating to the issue under appeal.

PROCEDURE

(3) The *Statutory Powers Procedure Act* does not apply to proceedings of the Tribunal with respect to interim assistance. 1997, c. 25, Sched. A, s. 30.

ORDER OF TRIBUNAL

31. (1) In an appeal to the Tribunal, the Tribunal may,

- (a) deny the appeal;
- (b) grant the appeal;
- (c) grant the appeal in part; or
- (d) refer the matter back to the administrator for reconsideration in accordance with any directions the Tribunal considers proper.

REASONS

(2) The Tribunal shall give reasons for its decision.

ADMINISTRATOR TO GIVE EFFECT

(3) The administrator shall give effect to the Tribunal's directions under this section.

ORDER TAKES EFFECT

(4) A decision of the Tribunal takes effect when it is made and, if it is appealed, continues in effect until a decision of the Divisional Court is made on appeal. 1997, c. 25, Sched. A, s. 31.

RECOVERY OF INTERIM ASSISTANCE

32. If the amount of interim assistance provided exceeds the amount that would have been payable under the final order of the Tribunal or Court during the period for which interim assistance was provided, the amount of the excess shall be deemed to be an overpayment. 1997, c. 25, Sched. A, s. 32.

APPEAL FRIVOLOUS, VEXATIOUS

33. The Tribunal shall refuse to hear an appeal if it determines the appeal to be frivolous or vexatious. 1997, c. 25, Sched. A, s. 33.

APPEAL DENIED

34. (1) An appeal to the Tribunal shall be denied if,

- (a) the person appealing fails, without reasonable cause, to file the information required for the appeal within the required time;
- (b) in the case of a hearing held in person, the person appealing fails, without reasonable cause, to attend the hearing at the time and place fixed for it;
- (c) in the case of a hearing held by telephone, video conference or some other means, the person appealing fails, without reasonable cause, to be available to be contacted for the purpose of the hearing.

LIMITATION ON SUBSEQUENT APPEAL

(2) If an appeal is denied under subsection (1), the appellant may not appeal a subsequent decision on the same issue during the prescribed period. 1997, c. 25, Sched. A, s. 34.

IF NO APPEAL COMMENCED

35. If an administrator's decision is not appealed to the Tribunal within the time required under this Act, no further appeal lies to the Tribunal or a court with regard to that decision. 1997, c. 25, Sched. A, s. 35.

APPEAL TO COURT

36. (1) The Director and any party to a hearing may appeal the Tribunal's decision to the Divisional Court on a question of law.

RECORD TO BE FILED IN COURT

(2) If a party appeals from a decision of the Tribunal, the Tribunal shall forthwith file with the Divisional Court the prescribed documents, which shall constitute the record in the appeal.

NOTICE TO DIRECTOR

(3) The person appealing shall serve the notice of appeal on the Director and any other party before the Tribunal.

MINISTER ENTITLED TO BE HEARD

(4) The Minister is entitled to be heard by counsel or otherwise on an appeal under this section.

POWERS OF COURT ON APPEAL

(5) In an appeal to the Court of a decision of the Tribunal, the Court may,

- (a) deny the appeal;
- (b) grant the appeal;
- (c) grant the appeal in part; or
- (d) refer the matter back to the Tribunal or the administrator for reconsideration in accordance with any directions the Court considers proper.

SAME

(6) The Tribunal or the administrator shall give effect to any direction given by the Court under this section. 1997, c. 25, Sched. A, s. 36.

SOCIAL BENEFITS TRIBUNAL

60. (1) A tribunal to be known in English as the Social Benefits Tribunal and in French as Tribunal de l'aide sociale is hereby established.

SAME

(2) The Tribunal shall conduct those hearings and carry out those duties that are assigned to it by or under this Act or any other Act. 1997, c. 25, Sched. A, s. 60.

MEMBERS OF TRIBUNAL

61. (1) The members of the Tribunal shall be appointed by order of the Lieutenant Governor in Council subject to the conditions set out in the order.

REMUNERATION

(2) The members of the Tribunal shall be paid the remuneration and expenses determined from time to time by the Lieutenant Governor in Council. 1997, c. 25, Sched. A, s. 61.

CHAIR AND VICE-CHAIRS

62. (1) The Lieutenant Governor in Council shall appoint one member of the Tribunal as Chair and no more than two members as vice-chairs.

SAME

(2) If the Chair is absent or unable to act or the office of Chair is vacant, a person designated by the Minister has and shall exercise the jurisdiction and power of the Chair including the power to complete any unfinished matter. 1997, c. 25, Sched. A, s. 62.

EMPLOYEES

63. Whatever employees the Lieutenant Governor in Council from time to time considers necessary for the proper conduct of the business of the Tribunal may be appointed under the *Public Service Act*. 1997, c. 25, Sched. A, s. 63.

HEARING BY ONE OR MORE MEMBERS

64. (1) The Chair of the Tribunal may authorize one or more members of the Tribunal to conduct a hearing and those members have all the powers of the Tribunal for the purpose of the hearing and any decision of those members shall be a decision of the Tribunal.

SAME

(2) If the Chair authorizes more than one member of the Tribunal to preside over a hearing, the Chair shall designate one of them as the presiding member of the panel conducting the hearing. 1997, c. 25, Sched. A, s. 64.

SITTINGS

65. (1) Sittings of the Tribunal may be held at the places in Ontario and in the manner and at the times the Tribunal considers most convenient for the proper discharge and speedy dispatch of its business.

SAME

(2) The Tribunal may hold a hearing by means of a paper hearing and shall hold a hearing by means of a paper hearing where prescribed. 1997, c. 25, Sched. A, s. 65.

HEARINGS IN PRIVATE

66. (1) Despite the *Statutory Powers Procedure Act*, all hearings of the Tribunal shall be heard in private.

PRIOR CONSIDERATION, COMMUNICATION

(2) Subject to subsection (3), members of the Tribunal holding a hearing,

- (a) shall not have taken part in any investigation or consideration of the subject-matter of the hearing before the hearing; and
- (b) shall not communicate directly or indirectly in relation to the subject-matter of the hearing with a person except upon notice to and opportunity for all parties to participate.

ADVICE TO THE TRIBUNAL

(3) The Tribunal may seek legal advice from an adviser independent from the parties, and members of the Tribunal may at any time consult with other members of the Tribunal.

ONLY MEMBERS AT HEARING TO PARTICIPATE

(4) No member of the Tribunal shall make a decision of the Tribunal following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

FINANCIAL HARDSHIP

(5) If a request for a hearing has been made and the Tribunal is satisfied that there will be financial hardship to a party or witness attending the hearing, the Tribunal may pay the party or witness travelling and living expenses necessary to enable his or her attendance at the hearing. 1997, c. 25, Sched. A, s. 66.

JURISDICTION OF TRIBUNAL

67. (1) The Tribunal shall not make a decision in an appeal under this Act that the administrator would not have authority to make.

SAME

(2) The Tribunal shall not inquire into or make a decision concerning,

- (a) the constitutional validity of a provision of an Act or a regulation; or

(b) the legislative authority for a regulation made under an Act, 1997, c. 25, Sched. A, s. 67.

Part IX, Sections 68 and 72 to 83 of Regulation 134/98 state:

DECISIONS THAT CANNOT BE APPEALED

68. For the purpose of paragraph 8 of subsection 26 (2) of the Act, the following are prescribed decisions:

1. A decision of the administrator not to extend the time as set out in subsection 69 (3).
2. A decision to refuse, suspend or cancel basic financial assistance or to reduce basic financial assistance on the death of a member of the benefit unit. O. Reg. 227/98, s. 37.

TIME AND MANNER OF COMMENCING APPEAL TO TRIBUNAL

72. (1) For the purpose of subsection 28 (1) of the Act, the prescribed time for appealing a decision of the administrator is 30 days from the day the administrator's decision is final under clause 25 (3) (b) of the Act. O. Reg. 227/98, s. 37.

(2) No appeal to the Tribunal shall be commenced more than one year after the date of the administrator's decision. O. Reg. 227/98, s. 37.

(3) A request to the Tribunal for a hearing shall be made by filing with the Tribunal a notice of appeal in a form approved by the Minister. O. Reg. 227/98, s. 37.

NOTIFICATION OF APPEAL AND WRITTEN SUBMISSIONS

73. (1) Upon receiving a notice of appeal, the Tribunal shall send a copy of the notice to any other parties to the proceeding. O. Reg. 227/98, s. 37; O. Reg. 546/98, s. 9.

(2) If the administrator intends to file a written submission, it shall be filed with the Tribunal within 30 days after the administrator receives a copy of the notice of appeal. O. Reg. 227/98, s. 37.

(3) A copy of the administrator's written submission, if any, shall be provided to the appellant and any other party. O. Reg. 227/98, s. 37.

(4) This section and sections 74 to 80 do not apply with respect to an appeal if the Tribunal determines the appeal to be frivolous or vexatious under section 33 of the Act. O. Reg. 227/98, s. 37.

NOTICE OF HEARING

74. (1) The Tribunal shall send a notice of hearing to all parties within 60 days after receiving a notice of appeal and the notice of hearing shall include the manner of holding the hearing. O. Reg. 227/98, s. 37.

(2) The notice of hearing shall set out,

- (a) in the case of an oral hearing, the place, date and time of the hearing; or
- (b) in the case of a paper hearing, the dates by which the parties are required to provide their written submissions and documentary evidence to the Tribunal. O. Reg. 227/98, s. 37.

(3) The Tribunal shall give the parties at least 30 days notice of the hearing. O. Reg. 227/98, s. 37.

NOTICE TO DIRECTOR OF APPEALS

75. For the purpose of section 29 of the Act, the following are the prescribed appeals:

1. Appeals involving issues of general importance.
2. Appeals involving the interpretation of this or any other legislation. O. Reg. 227/98, s. 37.

CONDUCT OF ORAL HEARING OF TRIBUNAL

76. (1) The appellant shall present his or her case first on an oral hearing of an appeal before the Tribunal unless the administrator agrees otherwise. O. Reg. 227/98, s. 37.

(2) Unless the parties agree otherwise, a party who intends to produce written or documentary evidence or written submissions at an oral hearing shall provide copies of that evidence or those submissions to the other parties and the Tribunal,

- (a) in the case of the appellant, at least 20 days before the hearing; and
- (b) in the case of the administrator and any other parties, at least 10 days before the hearing. O. Reg. 227/98, s. 37.

(3) If a party does not produce evidence or submissions in accordance with subsection (2) or subsection 73 (2), the Tribunal may, on the terms and conditions it considers appropriate,

- (a) adjourn the hearing;
- (b) refuse to accept the evidence or written submissions; or
- (c) accept the evidence or written submissions. O. Reg. 227/98, s. 37; O. Reg. 546/98, s. 10.

(4) The Tribunal shall ensure that the evidence at an oral hearing of an appeal is recorded by notes taken by a member of the Tribunal participating in the hearing or by a method from which a transcript can be produced. O. Reg. 227/98, s. 37.

INTERIM ASSISTANCE

77. For the purpose of subsection 30 (1) of the Act, interim assistance shall not exceed the maximum amount payable for income assistance and benefits permitted under the Act. O. Reg. 227/98, s. 37.

DECISION OF TRIBUNAL

78. (1) The Tribunal shall deliver a written decision to the parties to an appeal within 60 days after it last receives evidence or submissions on the appeal. O. Reg. 227/98, s. 37.

(2) The Tribunal's findings of fact shall be based exclusively on evidence admissible and facts of which notice may be taken under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. O. Reg. 227/98, s. 37.

(3) The Tribunal's decision shall include the principal findings of fact and its conclusions based on those findings. O. Reg. 227/98, s. 37.

(4) If an appellant withdraws a notice of appeal,

- (a) the Tribunal is not required to deliver a decision; and

- (b) the withdrawal shall be deemed to be a final order denying the appeal for the purpose of section 32 of the Act. O. Reg. 227/98, s. 37.

RECONSIDERATION BY TRIBUNAL

79. (1) A person requesting a reconsideration of a decision of the Tribunal shall file the request in a form approved by the Minister within 30 days after receiving the decision to which it applies and shall serve that request on the other parties to the original decision. O. Reg. 227/98, s. 37.

(2) Subject to subsection (3), the Tribunal may extend the time for requesting the reconsideration if it is satisfied that there are apparent grounds for a reconsideration and that there are reasonable grounds for applying for the extension. O. Reg. 227/98, s. 37.

(3) No request for a reconsideration may be made more than one year after the decision. O. Reg. 227/98, s. 37.

(4) The other parties may make written submissions to the Tribunal in response to the request for reconsideration if they do so within 15 days after receiving the request for reconsideration. O. Reg. 227/98, s. 37.

(5) The Tribunal shall issue a decision as to whether to hold a reconsideration hearing not sooner than 20 days after the request is made nor more than 60 days after the request is made. O. Reg. 227/98, s. 37.

(6) Sections 74 to 78 apply with necessary modifications to the conduct of a reconsideration hearing and for that purpose,

- (a) the person requesting the reconsideration shall present his or her case first and deliver the material set out in subsection 76 (2) in accordance with clause 76 (2) (a); and
- (b) the other parties shall deliver the material set out in subsection 76 (2) in accordance with clause 76 (2) (b). O. Reg. 227/98, s. 37.

SUBSEQUENT APPEAL ON SAME ISSUE

80. For the purpose of subsection 34 (2) of the Act, the prescribed period is a period of two years after the date of the administrator's decision. O. Reg. 227/98, s. 37.

APPEAL TO DIVISIONAL COURT

81. (1) A person appealing a decision of the Tribunal to the Divisional Court shall file a notice of appeal with the Divisional Court within 30 days after receiving the decision. O. Reg. 227/98, s. 37.

(2) If a party has made a request to the Tribunal for a reconsideration of its decision, no party may commence an appeal to the Divisional Court until,

- (a) the Tribunal has held the reconsideration and delivered a decision;
- (b) the Tribunal has refused to hold a reconsideration; or
- (c) the request for the reconsideration has been withdrawn. O. Reg. 227/98, s. 37.

(3) If subsection (2) applies, the notice of appeal with the Divisional Court shall be filed within 30 days after the occurrence referred to in subsection (2), rather than as provided in subsection (1). O. Reg. 227/98, s. 37.

RECORD FOR COURT

82. (1) For the purpose of subsection 36 (2) of the Act, the prescribed documents are,

- (a) the notice of appeal;
- (b) the original decision of the administrator;
- (c) any written submissions filed with the Tribunal;
- (d) any written or documentary evidence filed with the Tribunal;
- (e) any correspondence to or from the Tribunal concerning the conduct of the appeal;
- (f) the final decision and any preliminary decisions of the Tribunal;
- (g) the transcript of the Tribunal's hearing, if it is available, or the notes taken by a member of the Tribunal in accordance with subsection 76 (4); and
- (h) any documents with respect to a request to the Tribunal for a reconsideration or with respect to a reconsideration hearing. O. Reg. 227/98, s. 37.

(2) For the purpose of subsection 36 (2) of the Act, the record in an appeal shall be deemed to be filed forthwith if it is filed within 60 days after the Tribunal receives the notice of appeal to the Divisional Court. O. Reg. 227/98, s. 37.

PAPER HEARINGS

83. For the purpose of subsection 65 (2) of the Act, the cases on which the Tribunal shall hold a paper hearing are those cases where all parties consent to such a hearing. O. Reg. 227/98, s. 37.

Section 14 of Regulation 135/98 states:

ACCOMMODATION FOR APPEALS

14. A delivery agent shall provide a suitable room and other necessary accommodation for holding hearings of the Tribunal in the delivery agent's geographic area. O. Reg. 228/98, s. 4.

Intent of Policy

Applicants or participants have the opportunity to appeal decisions regarding basic financial assistance. Administrators are aware of, and adhere to, the legislative and regulatory requirements for appeals. Appeals proceed in accordance with the applicable legislation, regulations, and policy direction.

Decision-Making Principles

The following principle applies:

- withholding financial assistance pending an internal review must only be done in cases where the Administrator believes eligibility for assistance has ceased.

Standards

The following standards must be met:

- Administrator must make decisions consistently using provincial standards as set out in directives;
- the factors considered in making a decision are based on case circumstances and must be applied fairly and consistently;
- decisions regarding assistance are fair, consistent and unbiased and are based on relevant facts, legislation and regulations;
- decisions are clearly explained, so applicants and participants can make informed decisions about appealing to the Social Benefits Tribunal (SBT);
- notices regarding assistance are communicated in the form, manner and time frame required;
- at the end of the First Stage, if the worker finds the applicant ineligible, he/she must provide the applicant with a copy of the part of the application form completed at the end of the First Stage and written notice about the conclusion and the process for an objection; and
- information provided by an applicant or participant is given due consideration and is reflected appropriately in the decision of the Administrator.

Audit Requirements

Random file reviews are completed to ensure that:

- appropriate documentation is on file demonstrating that the steps taken to support a decision regarding basic financial assistance are consistent and based on legislation and regulations;
- a copy of the notice of decision is present on the file;
- verification is on file that the applicant or participant is provided with written notice of decision, including appeal rights where applicable; and
- verification is on file that written submissions are filed with the SBT within thirty days of receiving the request for submission.

Application of Policy

Written Notice of Decision

Where the delivery agent makes a decision affecting eligibility for or the amount of financial assistance, it must provide written notice to the applicant or participant that clearly states:

- what decision was made and its effective date;
- clear reasons for the decision;
- the appropriate legislative authority under which the decision was made;
- how the decision will affect the applicant's or participant's financial assistance or participation;
- whether the decision is appealable to the SBT;
- that, if the applicant or participant disagrees with the decision, a written, signed request for an internal review must be made for appealable decisions within ten (10) days after the receipt or deemed receipt of the notice of decision;
- the rules, procedures or requirements of the internal review process; and
- that at receipt of the internal review decision or if the internal review as requested and not completed by the delivery agent within ten (10) days, the applicant or participant has thirty (30) days in which to file an appeal with the SBT if there is still disagreement with the decision.

Clear written explanations to applicants and participants are intended to avoid requests for appeals that are based on misunderstandings regarding a decision. The decision letter may be delivered by prepaid regular mail or in person.

Request for an Internal Review

The applicant or participant has ten (10) calendar days from the day the decision is received, or deemed to be received, to request a review in writing if there is disagreement with the decision. Mail is deemed to be received three (3) days after mailing.

Internal Reviews of Appealable Decisions

Prior to an appeal to the SBT, an internal review must be requested and completed or requested and the time passed for the completion of the review. For this reason, the applicant or participant should be provided with verification that he/she has requested an internal review of any decision that is subject to appeal to the SBT.

An internal review request must be submitted to the responsible office in writing. A Request for Internal Review (Form 2280) is available from the Ministry's distribution centre and contains all required information necessary to initiate an internal review request and where necessary, reasons for requesting an extension of time to request the internal review.

In cases where the form is not used, the written request should include:

- a statement that the applicant or participant wishes to have a review of the decision;
- the reason he/she disagrees with the decision; and
- the name, case file identification and signature of the person requesting the review.

The requirements for the content of the request should be clearly stated in the notice of decision letter to the applicant or participant.

Oral Objection to a Conclusion of Ineligibility

If an applicant makes an oral objection to the conclusion of ineligibility made at the First Stage, the oral objection must be followed by a written objection prior to a scheduled Second Stage interview. See *Directive 4.0: Application Process*.

Oral Requests for Internal Reviews

Under exceptional circumstances, the Administrator may accept an oral request for an internal review of appealable decisions. The oral request must be followed by a written request. Exceptional circumstances may include, but are not limited to, situations where the applicant or participant:

- has literacy or language difficulties and is unable to provide a written request without assistance;

- due to extenuating circumstances (for example caused by a medical condition or bereavement) could not provide a written request during the ten (10) day time frame; and
- received the notice of decision late because of circumstance beyond his/her control and is not able to get a written request to the office within the ten (10) day time frame, (e.g., mail in area takes more than three days to deliver).

Where an oral request for a review is made and accepted, the applicant or participant must provide his/her written request at a later date.

Applicants and participants should be encouraged to submit written requests for internal reviews of decisions that are not appealable to SBT. However, written requests for internal reviews of non-appealable decisions are not required. A review may proceed if only an oral request is made. It is important that oral requests for internal reviews are documented.

Jurisdiction of Tribunal

Decisions of the Administrator affecting eligibility for assistance, or the amount of financial assistance are appealable to the SBT.

The SBT can only make a decision in an appeal under the *Ontario Works Act*.

Some decisions are not appealable. The Tribunal cannot hear an appeal regarding:

- a decision about employment assistance that does not affect eligibility for assistance or the amount of income assistance or a mandatory benefit; i.e. this would include how and whether community participation, employment supports or employment placement is available for a particular applicant or participant;
- a decision respecting discretionary benefits; i.e., this would include discretionary items and services such as moving costs, dental services and eyeglasses to adults;
- a decision of the Lieutenant Governor in Council respecting assistance in exceptional circumstances; i.e. this refers to assistance provided based on an Order-in-Council, where an applicant or participant is not otherwise eligible;

- a decision to provide a portion of basic financial assistance directly to a third party; e.g. examples include direct payment of rent to a landlord to avoid eviction and direct payment of heat or utility costs to avoid service disruptions;
- a decision to appoint a person to act on behalf of an applicant; e.g. appointment of a trustee in cases where an applicant or participant is not able to manage his/her assistance;
- a variation, refusal or cancellation of basic financial assistance caused by an amendment to this Act or the regulations; i.e., this would apply where the person is really objecting to a change in the legislation, but not where there is an issue as to how the changed eligibility rules apply to him or her;
- a decision respecting emergency assistance; i.e. a decision not to provide assistance without an application as the applicant's circumstances either do not meet the requirements for issuance of emergency assistance or because the applicant has other resources; and
- a decision prescribed under Section 68 of the regulation, which includes the following items that cannot be appealed:
 - a decision of the Administrator not to extend the time for an internal review; and
 - a decision to refuse, suspend, cancel or reduce basic financial assistance based on the death of a member of the benefit unit.

Minister's Regulations

The Minister of Community and Social Services has the authority to prescribe policy statements which apply to the interpretation of the Act and the regulations. This means that the Minister has the authority to prescribe a policy binding on Ontario Works staff and the Tribunal with respect to the interpretation of the legislation. This is being referred to as a "Minister's Regulation". There are currently no Minister's regulations at time of publication.

Filing an Appeal

A request for a hearing must be made using the approved Appeal Form. The applicant or participant must file the appeal with the Tribunal within 30 days of the completion of the internal review. The appellant must include reasons for the appeal on the Appeal Form.

If the applicant or participant requests an internal review, and staff do not complete it, the applicant or participant can submit an appeal to the Tribunal on the day after the time for completion of the internal review has elapsed.

SBT's Appeal Form must be available at the local Ontario Works office.

The Tribunal may extend the time for filing an appeal of a decision if it is satisfied that there are apparent grounds for an appeal and that there are reasonable grounds for allowing the extension. This means that the person must have a legitimate issue to appeal to the Tribunal and a good explanation for the delay. The Tribunal will review requests for extensions on a case by case basis.

Under no circumstances can the Tribunal extend the time for filing an appeal over one year past the date of the Administrator's decision.

Interim Assistance

The SBT can order payment of interim assistance if it is satisfied that the applicant or participant will suffer financial hardship during the time it takes to complete the appeal.

The Tribunal can make interim assistance orders for varying periods of time, up to the date the Tribunal's decision is delivered. The order can require the Administrator to provide interim assistance equal to the amount the person would have received prior to the disputed decision. Under no circumstances can the Tribunal order the Administrator to pay more than is allowed under the regulations.

The Tribunal has the authority to include benefits in the interim assistance order. The wording of the order should specify what is included.

The Administrator must implement the Tribunal's interim assistance order. If the Administrator disagrees with the Tribunal's order, he/she must provide reasons in writing clearly outlining the financial circumstances the Tribunal should consider.

An applicant or participant may only receive interim assistance if he/she meets all conditions of eligibility other than the issue under appeal. The *Statutory Powers Procedure Act* does not apply to proceedings of the Tribunal with respect to interim assistance.

Recovery of Interim Assistance

If the amount of interim assistance provided exceeds the amount payable under the final order of the Tribunal or Court, the amount of the excess shall be deemed

to be an overpayment. If the appellant withdraws the notice of appeal after interim assistance is received, the interim assistance is recoverable because the appeal is deemed to be denied. See *Directive 35.0: Recovery of Interim Assistance*.

Onus

It is the appellant's responsibility to satisfy the Tribunal that the decision of the Administrator is incorrect.

Appellant Fails to Attend Hearing

If the appellant fails to attend the hearing and does not have reasonable cause for not attending the hearing or does not have the written materials to conduct a paper hearing, the Tribunal must deny the appeal. The Tribunal will determine what constitutes "reasonable cause".

If an appeal is denied because the appellant did not attend the hearing or provide the necessary documents, he/she may not appeal a subsequent decision on the same issue for two years.

Parties to Proceeding

The Administrator, the applicant or participant, who requested the hearing and such other persons as SBT may specify, are parties to the proceedings before the Tribunal. The Administrator may appear personally before the Tribunal or may be represented by one of his/her staff or by counsel. Attendance at a hearing may be in addition to or instead of providing a written submission.

It is highly recommended that a submission be provided in every case, because the Tribunal can refer to it when scheduling an appropriate time for the hearing. The adjudicator can read the submission in preparation for the hearing and can refer to it in writing their decision.

Written Submissions

If the Administrator intends to provide written submission on an appeal, the submission must be filed with the Tribunal no later than 30 days following the receipt of copy of the Appeal Form and request for a written submission from the Tribunal. Written requests or notifications are deemed to be received three days after mailing.

The Tribunal may accept a late submission if appropriate under the circumstances. Therefore, the 30 day time limit should be met to avoid having to make such requests.

The appellant must present his/her case first except where the Administrator consents to present first. If the appellant is unrepresented and has difficulty knowing how to present a case, the Administrator's representative may consent to present first. This would help the appellant to understand the case against him/her and how to respond. It may also reduce the time necessary to complete the hearing by reducing the number of questions the appellant will need to ask of the Tribunal and the respondent.

Scheduling a Hearing Date

The Tribunal is required to provide all parties with written notice of the date and time of a hearing within 60 days of receiving the notice to appeal.

This does not mean that all hearings have to take place within 60 days of the appeal being initiated. Timing for actual hearing dates vary. The Tribunal will work with the parties to an appeal to determine scheduling of hearings based on various considerations, including the complexity of the issues under appeal.

A relatively simple issue could have a hearing date scheduled within six weeks of the notice of appeal being received. A complex appeal involving legal representation could have a hearing date established and notice sent for a hearing to take place three months in the future.

Documentary Evidence

If the appellant intends to introduce written or documentary evidence at a hearing, such materials must be provided to all other parties and to the Tribunal at least 20 days before the hearing.

The Administrator must provide the Tribunal and any other parties to the appeal any supplementary submissions or response to the appellant's written submission or evidence at least 10 days before the hearing.

Tribunal Decisions

The Tribunal is required to deliver a written decision to the parties to an appeal within 60 days following the Tribunal's receipt of the last evidence presented in the appeal.

In an oral hearing, the last evidence would be provided at the hearing unless the Tribunal specifically makes an order allowing additional material to be filed after the hearing. In a paper hearing, the last evidence would be provided on the date the parties were required to provide their written submissions and documentary evidence to the Tribunal.

In its decision, the Tribunal may:

- deny the appeal;
- grant the appeal;
- grant the appeal in part; or
- refer the matter back to the Administrator for reconsideration in accordance with any directions the Tribunal considers proper.

The Administrator must act on the decision of the Tribunal. The Tribunal's decision remains in effect pending the outcome of a request for reconsideration or appeal to the Divisional Court.

Request for Reconsideration and Variation of Tribunal Decision

A reconsideration of a Tribunal decision can be requested by a party to the appeal within 30 days of receiving the appeal decision. The Tribunal may extend the time for requesting the reconsideration if it is satisfied that there are apparent grounds for a reconsideration and that there are reasonable grounds for applying for the extension. No request for reconsideration may be made more than one year after the decision.

The other party to the appeal may respond to the request for a reconsideration within 15 days of receiving the copy of the request.

The Tribunal decides whether to hold a reconsideration no earlier than 20 days and no later than 60 days from the receipt of the request. The Tribunal's decision is provided in writing.

The intent is that the request for reconsideration would be dealt with as a “paper hearing” so that the only time the Administrator would have to attend in person is when SBT has decided to allow a reconsideration.

The Administrator may consider requesting a reconsideration where it is believed that the Tribunal has made an error in its decision based on the facts of the case or the Tribunal's interpretation of the Act or regulations.

In a reconsideration hearing, the party requesting the reconsideration presents his/her case first and must provide the Tribunal and the other parties with any written submission or evidence 20 days prior to the hearing date.

The other parties must provide any written submissions 10 days before the hearing.

Appeal to Divisional Court

When a reconsideration hearing has been requested, an appeal to Divisional Court cannot be made until the Tribunal has either denied a reconsideration hearing request or held the reconsideration hearing and provided its decision.

An appeal of a Tribunal decision can be made to Divisional Court where it is believed that the Tribunal has misinterpreted the Act and/or regulations. An appeal to Divisional Court requires legal counsel because the procedures are not geared towards unrepresented persons.

When an appeal to Divisional Court is being made, the party appealing must send the Notice of Appeal to write to the other parties, the Tribunal, and the Ministry to advise them of this action.

The regulation sets out which documents must be filed with the Court by the Tribunal. The combination of these documents becomes the Record of Proceedings:

- the Appeal Form;
- the original decision of the Administrator;
- any written or documentary evidence filed with the Tribunal;
- any written submission filed with the Tribunal;
- the decision of the Tribunal; and
- the notes taken by a Tribunal member at the hearing or a transcript of the hearing.

The Tribunal must file the Record of Proceedings with the Divisional Court no later than 60 days following receipt of the Notice of Appeal to the Divisional Court.